

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of:)	
)	
Review of the Emergency Alert System;)	
Independent Spanish Broadcasters)	EB Docket 04-296
Association, the Office of)	
Communication of the United Church of)	
Christ, Inc., and the Minority Media and)	
Telecommunications Council, Petition)	
for Immediate Relief;)	
)	
Randy Gehman Petition for Rulemaking)	

TO: David S. Turetsky, Chief
Public Safety & Homeland Security Bureau

***WVCH COMMUNICATIONS, INC. PETITION FOR TEMPORARY
WAIVER OF CAP OBLIGATIONS***

WVCH Communications, Inc., (“WVCH”), license of WVCH (AM), Chester, PA, Facility ID# 74166 (the “Station”), pursuant to 47 C.F.R. §11.52(d)(4) of the Commission’s Rules, hereby requests a temporary waiver of its obligations under Part 11 of the Commission’s Rules regarding monitoring for, receiving and processing CAP formatted EAS messages (the “CAP Rules”) for the Station because of the unavailability of broadband internet service at the Station’s co-located studio/transmitter site. As detailed in the attached declaration of William Fenton, broadband internet service is not available at the Station studio/transmitter facilities and because compliance with the CAP Rules requires broadband internet access, a waiver of the CAP Rules for the Station would serve the public interest.

Background

In the *Fifth EAS Report & Order*,¹ the Commission required Emergency Alert System (“EAS”) Participants to utilize EAS equipment that can receive and transmit

¹ *Review of the Emergency Alert System, Fifth Report & Order*, 27 FCC Rcd. 642 (2012) (“*Fifth EAS Report & Order*”).

messages in the EAS format called the Specific Area Message Encoding. In the *Fifth EAS Report & Order*, the Commission further stated that the “physical unavailability of broadband Internet service offers a presumption in favor of a waiver” of the CAP Rules because “the physical availability of broadband Internet access would be a physical predicate for compliance with the requirements that EAS Participants be able to receive CAP-based alerts.”² As a result, the Commission concluded that it would not be appropriate to require stations to purchase equipment that could not be utilized due to the unavailability of broadband Internet access.

WVCH satisfies the presumption established by the Commission in the *Fifth EAS Report and Order*. In researching to purchase CAP-compliant equipment, WVCH discovered that a broadband internet connection would be required and further investigation revealed that no such service is physically available at this time at the Station’s co-located studio/transmitter facilities, which are in a relatively remote location. Accordingly, WVCH would not be able to use any equipment that it purchased for CAP compliance.

WVCH will continue to periodically monitor the situation every six months to determine if broadband Internet service becomes physically available at its studio/transmitter site and will, when such service becomes available, acquire and install CAP-compliant equipment and notify the Commission of same.

Waiver Request

WVCH meets the applicable Commission standards for the requested waiver. The Commission may waive its rules for good cause shown.³ The Commission may also exercise its discretion to waive a rule where particular facts would make strict compliance inconsistent with the public interest, and grant of a temporary waiver would not undermine the policy served by the rule.⁴ WVCH has acted with diligence in attempting to comply with the CAP Rules but cannot because acquisition and installation

² *Fifth EAS Report & Order*, 27 FCC Rcd at 696.

³ 47 C.F.R. § 1.3. *See also Northeast Cellular Telephone Co., L.P. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (“FCC has authority to waive its rules if there is ‘good cause’ to do so.”)

⁴ *See WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969), *aff’d*, 459 F.2d 1203 (D.C. Cir. 1972).

of the equipment at this time would be useless given the unavailability of broadband Internet access needed to make it functional. WVCH believes that good cause exists for granting its requested waiver. Grant of WVCH's request for waiver would not undermine the Commission's public policy goals. WVCH is compliant with current EAS obligations and will continue to maintain its legacy EAS equipment while awaiting availability of broadband Internet access and delivery, installation, and testing of the CAP-compliant equipment after such access becomes available. Emergency alerts will continue to be distributed; they merely will not be received in the soon-to-be-updated manner.

Conclusion

For the foregoing reasons, WVCH respectfully requests the Commission grant its Petition for Temporary Waiver. A Declaration of William Fenton attesting to the foregoing facts is attached in support of this requested waiver.

Respectfully Submitted



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June 27, 2012

DECLARATION OF WILLIAM FENTON

1. My name is William Fenton and I am general manager of AM Station WVCH, Chester, PA
2. I declare under penalty of perjury that the facts contained in the foregoing Petition for Temporary Waiver are true and correct to the best of my knowledge, information and belief after reasonable inquiry, that the Petition is well grounded in fact, warranted by existing law, and not interposed for any improper purpose.
3. WVCH personnel have investigated the physical availability of broadband Internet access at the WVCH co-located studio/transmitter site and no such service is currently available from telco, cable or other provider.



WILLIAM FENTON